2300-792-2 - EMPLOYEE COUNSELING SERVICES PROGRAM

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- *The acronym "BID" no longer means "Bureau, Institute and

Division."As defined in NIH Manual 1122, BID is an "NIH Organizational term encompassing all research institutes, the National Library of Medicine, and Divisions and Centers (DRG, DRS, DRR, DCRT, CC, FIC, NCNR) that report to the Director, NIH."Table of contents

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This chapter states NIH policy concerning employee alcohol, drug abuse and emotional/behavioral problems which result or could result in deteriorating employee work performance, conduct, attendance or reliability. It discusses counseling and rehabilitation services which NIH shall provide, and describes responsibilities of program officials, supervisors, employees and personnel staff.

This chapter applies to all NIH civilian employees, including those outside the Washington Metropolitan area. It applies equitably at all levels of the organization and to all grades and pay plans. Those field offices without adequate health facilities are expected to request guidance from the Medical Director, Occupational Medical Services (OMS), Division of Safety, Bethesda, MD, (301) 496-4411, and to use community resources wherever available.

The Employee Counseling Services Program (ECS) supplements, but does not replace, existing procedures for dealing with problem employees through appropriate personnel actions.

B. References

- 1. 21 U.S.C. 1180 provides that the OPM shall be responsible for developing and maintaining, through the National Institute on Drug Abuse and other Federal agencies, prevention, treatment, and rehabilitation services for drug abuse among Federal employees.
- 2. 42 U.S.C. 290dd-3 provides for confidentiality of alcohol and drug abuse patient records. Implementing regulations are contained in 42 CFR.
- 3. 5 U.S.C. 7901 authorizes heads of Federal Departments to establish health service programs for the purpose of promoting and maintaining the physical and mental fitness of Federal employees.
- 4. GSA building regulations (41 CFR 101-20.307) and NIH regulations (45 CFR 3.43(d)) prohibit a person from selling, consuming or using intoxicating beverages, narcotics or similar drugs, except in connection with official duties, in the course of professional treatment, in living quarters, or as otherwise authorized by the Director, NIH.
- 5. Federal Personnel Manual Chapter 751 provides guidance on action to be taken to relieve employees from duty for emergency reasons or because the employee is not ready, willing, and able to work.
- 6. Federal Personnel Manual Chapter 792 provides basic Office of Personnel Management (OPM) guidance on Federal Employees Health and Counseling Programs.
- 7. FPM Bulletin 751-3, dated 9/24/85, provides questions and answers on performance and conduct problems involving medical considerations.
- 8. HHS Personnel Instruction 735-1, dated 1/23/81, provides guidance on Standards of Ethical Conduct.
- 9. HHS Personnel Instruction 752-1, dated 7/19/85, provides guidance on adverse actions, specifically removals, suspensions, reductions in grade, reductions in pay, and furloughs of 30 days or less.
- 10. HHS Personnel Instruction 792-2, dated 8/13/82,

provides the policy and requirements of the Department as they relate to the Employee Counseling Services Program.

- 11. HHS Circular 751-1, dated 12/2/86, provides a discussion prepared by the U.S. Office of Personnel Management, Appellate Policy Division, of rulings involving the use of enforced leave and suggests alternatives to be considered.
- 12. NIH Manual Chapter 2300-339-3, provides the policies and procedures for reasonable accommodation for employees who develop a disabling condition while employed at the NIH.

C. Responsibilities

- 1. Medical Director, Occupational Medical Services (OMS), Division of Safety, has the responsibility for ensuring that evaluation and referral services are available, that community treatment services are identified, and that supervisory training and employee awareness programs are provided in the area of alcohol, drug abuse, and emotional/behavioral problems.
- 2. Chief, Recruitment and Employee Benefits Branch (REBB), Division of Personnel Management (DPM), is responsible for:
 - a. providing overall guidance and assistance in the implementation of the NIH procedures related to employee alcohol, drug abuse, or emotional/behavioral problems. Using information provided by the BID Personnel Offices and other appropriate sources, REBB will periodically evaluate the effectiveness of these procedures in meeting program goals.
 - b. providing guidance to NIH personnel staff in the requirements and use of the NIH Employee Counseling Services Program and for coordinating the scheduling of ECS training programs with BID Personnel Offices.
- 3. ECS Counselors are responsible for:

- a. advising the employee of the confidential nature of the ECS Program, and that a signed consent form by the employee would be necessary before the ECS counselor could advise the supervisor regarding any issues other than expected absences from the job for treatment and proper expectations for work performance during the treatment.
- b. evaluating and diagnosing employees, referring to outside or internal treatment resources and short-term counseling of employees referred to them for determinations related to alcohol, drug abuse or emotional/behavioral problems.
- c. developing and administering training courses for supervisors and managers, employee groups and other appropriate audiences. This should be done in cooperation with REBB and BID Personnel Officers. These courses will furnish guidance on subjects such as:
 - Identification of an employee whose poor work performance or conduct suggest a potential alcohol, drug abuse or emotional/behavioral problem.
 - Counseling methods.
 - NIH policies related to alcohol, drug abuse or emotional/behavioral problems.
- d. maintaining close working relationships with community resources which offer treatment and rehabilitative services locally. These resources may include community psychiatric clinics or services, Alcoholics Anonymous, etc. Professional consultation from OMS staff physicians and the OMS psychiatrist will be available to the counselors.
- e. maintaining records and gathering information/statistics incoordination with other appropriate offices, for evaluation and reporting to the Department and the Office of Personnel Management. Disclosure of such records will be statistical in nature and shall not identify individuals.

- 4. Labor Management Branch will provide overall guidance and regulatory or the Merit Systems Protection Board (MSPB) Decision interpretations to OMS and BID Personnel Offices in those instances where adverse action may be appropriate.
- 5. BID Personnel Officers are responsible for furnishing technical guidance to supervisors on regulations and procedures related to the ECS program, discussing available options, and advising them on taking appropriate personnel action when counseling or rehabilitation efforts are in process or at their conclusion.
- 6. Supervisors are responsible for the work of the employees under their direction. In relation to alcohol, drug abuse, or emotional/behavioral problems, this requires that supervisors be aware of NIH policies related to these medical conditions and document specific instances in which employee's work performance/conduct fails to meet acceptable standards or where there appears to be a pattern of deteriorating performance/conduct. Supervisors are responsible for obtaining assistance from their local personnel office when dealing with employees who are not ready, willing and able to work, formally referring an employee to the ECS program for medical advice and diagnosis, and/or taking corrective action.
- 7. Employees are responsible for notifying the supervisor of any medical condition that may interfere with satisfactory performance of assigned duties or conduct on the job.
- D. Definitions For purposes of this issuance, certain terms are defined as follows:
 - 1. Alcohol Abuse A treatable problem in which the employee's work performance or conduct may be impaired as a result of the use of alcohol. Alcoholism is a handicapping condition under Section 501 of the Rehabilitation Act of 1973, (29 U.S.C. 791), as determined by the Attorney General of the United States.

- 2. Drugs Substances that affect the functions of the body or the mind when taken into the body or applied to its surfaces.
- 3. Drug Abuse A treatable problem in which the employee's work performance or conduct may be impaired as a result of use of legal or illegal drugs. Drug abuse is a handicapping condition under Section 501 of the Rehabilitation Act of 1973, (29 U.S.C. 791), as determined by the Attorney General of the United States.
- 4. Emotional/behavioral problems Personal problems which may impair work performance. Such problems include depression, anxiety, stress and psychiatric illnesses, and those stemming from alcohol, drug abuse, or emotional/behavioral problems of another person, such as a spouse, supervisor, or a co-worker. Such problems can also result from working conditions or the nature of the job itself.E.Policy
- 1. Emotional/behavioral problems and the use of alcohol or drugs are of concern to NIH as they relate to conduct and performance on the job. When an employee's use of alcohol or drugs or emotional/behavioral problems interfere with the efficient and safe performance of his/her assigned duties or the duties of other employees, reduces dependability, or reflects discredit upon NIH, there must be action in the form of:
 - a. Following non-disciplinary procedures under which the employee will be offered referral to the ECS Program in writing as well as orally. (See Illustration 1 for steps on referral process); and/or
 - b. Invoking the appropriate personnel action if employee's response to item (a) does not result in acceptable work performance/conduct; and/or
 - c. Informing the Security Branch, Division of Safety, when a drug problem also involves criminal conduct directed toward or potentially harmful to the person or property of others.
- 2. The status of the employee who is not ready, willing,

and able to work will be handled on a case by case basis in consultation with the BID Personnel Office.

F. Referral for Evaluation and Treatment

- 1. Supervisory Referral (See Illustration 1)
 - a. When work performance/conduct is not in question:

The supervisor may encourage an employee to seek counseling from the ECS Program at any time there is a noticeable change in an employee's behavior or if an employee comes to the supervisor with a personal problem. The supervisor provides the employee with a copy of the brochure covering the variety of services provided by the ECS. This can be done long before there is deteriorating work performance/conduct.

The supervisor may contact the ECS, if he/she so desires, for a preliminary consultation before finalizing his/her decision on which course of action to pursue. In addition, the supervisor may seek the guidance of an ECS counselor in coping with a problem employee or work situation under the guidelines prescribed in F.2. below (Self-Referral). (There is a special service provided through the OMS/ECS to specifically address/handle employees who are mentally or physically disabled. This service is available to the supervisor who may need help in coping with a handicapped employee, as well as to the employee.)

The supervisor may, at the employee's discretion, accompany that employee to the ECS as a part of the initial referral, and may attend any subsequent meetings/sessions as deemed appropriate by the counselor and the employee.

b. When work performance/conduct is in question:

The supervisor is the key person in the process that results in a referral of an employee for diagnosis and treatment. When an employee demonstrates an inability or unwillingness to perform adequately, and the supervisor believes the employee has an alcohol, drug abuse or emotional/behavioral problem, the supervisor should contact the BID Personnel Office and the ECS for advice about referral.

After the supervisor has received the advice of the personnel office and ECS, the supervisor should meet with the employee, describe the employee's poor work performance/conduct, discuss specific corrective action to be taken to improve performance, conduct or attendance, and the time frame by which corrective action is to be completed. The supervisor should tell the employee that, if a personal problem is involved, he/she should contact the ECS. A copy of the brochure covering the variety of services provided by the ECS should be given to the employee. The supervisor documents the first meeting and gives a copy of the documentation to the employee.

If performance, conduct, or attendance does not improve, the supervisor should meet with the Personnel Specialist to discuss the problem, and with his/her help should prepare a memorandum pointing out specific problems, and formally referring the employee to the ECS program. The supervisor should then meet with the employee, and with documentation at hand, point out how performance, conduct or attendance has not improved, give the employee a memorandum outlining these deficiencies (See Illustration 2) and formally refers him/her to the ECS program. The employee should be informed that this is not a disciplinary action, and the memorandum will not be put in his/her Official Personnel Folder (OPF), but may be used as documentation if the problems persist and personnel action becomes necessary.

The importance of firm and consistent application of corrective procedures to avoid disciplinary action cannot be overstated; however, if the employee refuses help and performance/conduct continues to be unsatisfactory, the supervisor, in collaboration with the Personnel Office should pursue the appropriate personnel action.

c. When there is a possibility that the employee may be under the influence of drugs and/or alcohol:

If a supervisor observes that an employee demonstrates impairment in performance or behavior, and substance intoxication is a possibility, the employee may be escorted to OMS and evaluated there. Alternatively, if the employee acknowledges that he/she is incapacitated by drugs or alcohol, he/she can elect to go home or to an emergency room if arrangements can be made for him/her to arrive safely. Employees seen at outlying OMS health units may be transported to the main OMS health unit for evaluation when necessary.

OMS medical assessment will include determining current ability to perform duties safely, recommending further evaluation, establishing a medical treatment plan, and preparing appropriate communication with the supervisor. Based on the medical assessment, one of the following options may be recommended:

- (1) Arrange for immediate referral for emergency room evaluation and/or hospital admission.
- (2) Arrange for employee to be escorted home (consider family, taxi) because he/she is too impaired to work.
- (3) If acute impairment is not demonstrated, the employee may be medically cleared to return to work that day.

OMS will communicate with the supervisor by:

- (1) verbally advising him/her on the employee's ability to perform work duties;
- (2) completing Form NIH 2558, Medical Evaluation of Work Status (Illustration 3), describing the employee's ability to perform work duties and need for further

OMS assessment; and

(3) issuing a memorandum (Illustration 4) documenting the supervisor's referral and OMS recommendations.

Employees with suspected or proven substance abuse should always be referred to the ECS counselor by OMS staff and/or the supervisor (Illustration 2). The ECS counselor will advise the supervisor of the employee regarding compliance with treatment recommendations (Illustrations 5 & 6).

2. Self-Referral

a. When work performance/conduct is not in question:

Employees may voluntarily refer themselves to an ECS counselor. The above procedures shall not apply to self-referrals, provided that work performance/conduct does not become a related issue.

In the case of self-referral, no information regarding an employee's entrance into the program will be communicated to the supervisor unless the employee signs a Release of Information (ROI) or the supervisor requests validation of employee's absence from the worksite. ECS' philosophy is to encourage employees to recognize their own coping problems and seek help as soon as possible for early intervention.

b. When an employee is self-referred to either ECS or OMS and acute substance intoxication is a possibility:

The OMS will conduct a medical assessment to determine current ability to perform duties safely, recommend further evaluation, establish a medical treatment plan, and prepare appropriate communications with the supervisor.

Based on the medical assessment, one of the following options may be recommended:

- (1) Arrange for immediate referral for emergency room evaluation and/or hospital admissions.
- (2) Arrange for the employee to be escorted home (consider family or a taxi) because he/she is too impaired to work.
- (3) If acute impairment is not demonstrated, the employee may be medically cleared to return to work that day.

G. Relationship to Disciplinary Action

In relating the ECS Program procedures to disciplinary policies and practices, there must be a clear understanding that shielding problem employees by tolerating poor performance/unacceptable conduct contributes to the progression of the employee's illness by delaying entry into the ECS program. The employee should be encouraged to participate in the ECS program by emphasizing that failure on the employee's part to correct performance/conduct will be dealt with through appropriate personnel procedures.

Some instances may warrant concurrent pursuit of ECS assistance and the appropriate personnel action. Supervisors should contact the BID Personnel Office for guidance to assure that proper documentation is prepared and procedures are followed. The Labor Management Branch may be consulted by the BID Personnel Office for overall guidance and regulatory or MSPB Decision interpretations and/or assistance in identifying any applicable MSPB case(s) which may provide appropriate guidance or other relevant information.

H. Confidentiality of Records

The confidentiality of records relating to alcohol, drug abuse, or emotional/behavioral problems is established by law. The law and implementing regulations require, among other things, that a patient must provide prior written consent for any disclosure of such records. Therefore, records on employees who have been referred for diagnosis and treatment will be maintained in the strictest confidence and security.

Communication of information between OMS staff having a need for such information in connection with its official duties does not constitute disclosure under the law and regulations. Communications from the ECS staff to supervisors and personnel staff concerning the participation of individual employees in the program does not constitute disclosure; ECS staff will provide such information only in those cases where the employee has given prior written consent.

I. Illegal Activities

If illegal activities, particularly criminal activities, are suspected, such activities are to be reported to the Security Branch, Division of Safety.

J. Additional Information

For further information on the manual chapter, contact the REBB, DPM, on 496-5979.

K. Additional Copies of this Chapter

For copies of the manual chapter, send NIH Form 414-5, to the Printing and Reproduction Branch, DTS, in Bldg. 31, Room B4B-N-09 or call REBB, 496-4973.

FLOW CHART FOR REFERRAL TO ECS

Supervisors may encourage an employee to seek counseling from the ECS Program at any time there is a noticeable change in an employee's behavior or if an employee comes to the supervisor with a personal problem. This can be done long before there is a deteriorating work performance. The following steps are suggested when there is a problem affecting work performance/conduct:

Refer to Hard Copy Illustration 1

SAMPLE MEMORANDUM OF SUPERVISORY REFERRAL TO ECS

Refer to Hard Copy Illustration 2

SAMPLE FORM NIH 2558

Refer to Hard Copy Illustration 3

SAMPLE MEMORANDUM FROM OMS MEDICAL STAFF TO SUPERVISOR

Refer to Hard Copy Illustration 4

SAMPLE MEMORANDUM FROM ECS TO SUPERVISOR REGARDING INITIAL REFERRAL

DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service National Institutes of Health

Date

>From Employee Counseling Services Counselor

Subject (Employee)

To (Supervisor)

You referred your employee, , for

(name of employee)

evaluation by the OMS staff on . This

(date)

employee was evaluated and then referred to the

Employee Counseling Services (ECS). The employee has

been evaluated and a specific treatment plan has been

developed which

(Mr. Mrs., or Ms. and last name only

(has/has not) accepted.

(Counselor)

cc:

(Employee)SAMPLE MEMORANDUM FROM ECS TO SUPERVISOR REGARDING

PREMATURE TERMINATION OF RECOMMENDED TREATMENT

Refer to Hard Copy Illustration 6